

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LUCASYS INC.,

Plaintiff,

v.

POWERPLAN, INC.,

Defendant.

Civil Action File

No.: 1:20-cv-2987-AT

PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and Northern District of Georgia Local Rule 56.1, Plaintiff Lucasys Inc. (“Plaintiff” or “Lucasys”) moves the Court for partial summary judgment, and requests that the Court find Defendant PowerPlan, Inc. (“Defendant” or “PowerPlan”) liable as a matter of law for a *per se* illegal negative tying agreement under 15 U.S.C. § 1 (Count III). Lucasys further moves the Court to conclude that PowerPlan has monopoly power or market power as a matter of law for purposes of its other antitrust claims (Counts I, II, III, IV, V, XI, and XII). Finally, Lucasys moves the Court to find that it has antitrust standing to bring its antitrust claims as a matter of law and enter summary judgment in its favor as to PowerPlan’s first affirmative defense.

As set forth in Plaintiff’s Brief in Support of this Motion, Plaintiff is entitled to summary judgment on its *per se* negative tying claim against Defendant because

there is no genuine dispute of material fact that PowerPlan has appreciable economic power in the tax software market for rate-regulated, investor-owned utilities and that it used that power through a negative tying arrangement. Customers were forced to accept the negative tying arrangement, which excluded Lucasys from the separate tax services market. Summary judgment is therefore proper, and the only outstanding question for trial is the amount of damage that Lucasys suffered from PowerPlan's negative tying arrangement.

Similarly, Lucasys is entitled to summary judgment on the market power and monopoly power element of its other antitrust claims (Counts I, II, IV, V, XI, and XII). As detailed in its accompanying brief, there is no genuine issue of material fact that PowerPlan has monopoly power in the tax software market. It is also undisputed that PowerPlan has a differentiated product and that there are barriers to entering the Tax Software market. Because Defendant has monopoly power as a matter of law, Defendant necessarily wields lesser amount of market power necessary for Plaintiff's other Section 1 claims. Finally, contrary to PowerPlan's contention, Lucasys has antitrust standing to bring this action as a matter of law, as it is a competitor to PowerPlan who has been harmed by PowerPlan's illegal acts, and Lucasys is an efficient enforcer of the antitrust laws.

For the foregoing reasons, as set forth in more detail in the accompanying

brief, this Court should grant Plaintiff's Motion for Partial Summary Judgment. In support of this Motion, Plaintiff relies on its Brief in Support of this Motion, its Statement of Undisputed Material Facts, and all pleadings and filings of record.

Respectfully submitted this 21st day of April, 2023.

/s/ Joshua A. Mayes

Richard L. Robbins

Georgia Bar No. 608030

rrobbins@robbinsfirm.com

Jason S. Alloy

Georgia Bar No. 013188

jalloys@robbinsfirm.com

Joshua A. Mayes

Georgia Bar No. 143107

jmayer@robbinsfirm.com

Rachel F. Gage

Georgia Bar No. 547982

rgage@robbinsfirm.com

Evan C. Dunn

Georgia Bar No. 535202

edunn@robbinsfirm.com

Robbins Alloy Belinfante Littlefield LLC

500 14th Street, N.W.

Atlanta, Georgia 30318

Telephone: (678) 701-9381

Facsimile: (404) 856-3255

Aaron Gott (admitted *pro hac vice*)

aaron.gott@bonalawpc.com

BONA LAW PC

15 South 9th Street, Suite 239

Minneapolis, Minnesota 55402

(612) 284-5001

Jarod Bona (admitted *pro hac vice*)

jarod.bona@bonalawpc.com

Jon Cieslak (admitted *pro hac vice*)
jon.cieslak@bonalawpc.com
BONA LAW PC
4275 Executive Square, Suite 200
La Jolla, California 92037
(858) 964-4589
(858) 964-2301 (fax)

Counsel for Plaintiff Lucasys Inc.

L.R. 7.1(D) CERTIFICATION

I certify that this Motion has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this Motion has been prepared using 14-pt Times New Roman Font.

/s/ Joshua A. Mayes
Joshua A. Mayes

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the within and foregoing with the Clerk of Court using the CM/ECF electronic filing system which will automatically send counsel of record e-mail notification of such filing.

This 21st day of April, 2023.

/s/ Joshua A. Mayes
Joshua A. Mayes